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**Qualification of Drivers; Exemption Applications; Vision
67 FR 10475, March 7, 2002**

Advocates for Highway and Auto Safety (Advocates) files these comments regarding the Federal Motor Carrier Safety Administration's (FMCSA) notice announcing the agency's decision to grant renewal of 19 exemptions from the federal vision requirement, 49 Code of Federal Regulations 391.41(b)(10).

The statute governing exemptions from the Federal Motor Carrier Safety Regulations (FMCSR) requires that, for each and every application for exemption, the Secretary "shall give the public the opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request." 49 U.S.C. § 31315(b)(4). The statute requires the Secretary to disclose relevant information to the public for its review in order to provide comment regarding the application. In the case of exemption applications from drivers who have already received a previous 2-year exemption, the FMCSA has dispensed with the formality of informing the public with regard to specific "relevant information" of each applicant, including the driving record during the prior 2-year exemption. This is a substantive breach of the public disclosure requirements in the statute.

FMCSA has decided that updated factual information regarding the driving record of exemption applicants does not have to be disclosed to the public before granting a second exemption request. The instant notice, and other similar notices termed "renewals" by the agency, do not provide individualized information regarding the driving history of each applicant during the 2-year exemption period, although this is precisely the ~~type~~ of information that the agency relies on and discloses prior to granting the initial exemption to each applicant. The summary information provided regarding applications for a second 2-year exemption does not afford the public an "opportunity to inspect the safety analysis and any other relevant information known to the Secretary." *Id.* The agency notice provides only a cursory statement that the

applicants have provided *en masse* sufficient information to qualify for another exemption, but the agency does not share that information in the public notice. No factual recitation is provided regarding the driving experience, crash and citation record of each applicant during the prior 2-year exemption period – records that are directly relevant to the application for an additional 2-year exemption. Although the agency makes specific reference to the fact that each applicants' vision impairment remains stable, the agency summarily concludes that "a review of their records of safety while driving with their respective deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards." 67 FR 10476.² The agency does not share this driving record information or its analysis with the public, nor does it place these materials in the docket. Even if this information does not disqualify the drivers from consideration of a second exemption based on the screening criteria, the agency is required to provide the public with the specific information on which its safety determination is based. Using this secret information, however, FMCSA unilaterally concludes that each applicant should be granted another 2-year exemption. *Id.* As a result, the public cannot form its own views, raise specific factual questions or provide informed comment to the agency.

The FMCSA has not responded to this argument. The agency inaccurately states in this notice, **as** it has in other similar notices, that it has addressed Advocates' contention regarding the agency's failure to disclose material information regarding the driving records of the applicants. *Id.*, *citing*, 66 FR 17994 (Apr. 4, 2001). In that notice, however, the FMCSA did not explain its failure to disclose relevant factual information. Rather, the agency merely defends the

¹ Advocates is unaware of any "standards" for vision exemptions. Rather, the exemptions are exceptions to the formally adopted vision standard based on surrogate screening criteria used in lieu of a performance standard for visual capability that can directly measure visual acuity, perception and field-of-view, etc., the factors which form the basis of the vision standard in 49 C.F.R. 391.41(b)(10). A performance standard would then relate that visual capability to individual performance of the driving task in commercial motor vehicles.

² The identical wording is used by the agency in all renewal notices. *See, e.g.*, 66 FR 66969 (Dec. 2001); 66 FR 48505 (Sept. 20, 2001); 66 FR 41656, 41657 (Aug. 8, 2001).